

UNITED STATES DISTRICT COURT
DISTRICT OF ALASKA

PLAN FOR PROMPT
DISPOSITION OF
CRIMINAL CASES

NOVEMBER 1, 2002

SPEEDY TRIAL ACT OF 1974
18 U.S.C. §§ 3161 – 3174
JUVENILE DELINQUENCY
18 U.S.C. §§ 5036, 5037
INTERSTATE AGREEMENT ON DETAINERS
18 U.S.C. App. 2, § 2

CONTENTS

I — ADOPTION	1
II — GENERAL	1
§ 2.01. References to Statutes	1
§ 2.02. Conflicts.	1
§ 2.03. Applicability.	1
(a) <i>Offenses</i>	1
(b) <i>Additional Persons to Whom Applicable</i>	1
§ 2.04. Calendaring	1
§ 2.05. Occurrence of Triggering Events	1
(a) <i>Summons</i>	1
(b) <i>Arrest</i>	1
(c) <i>Appearance by an Attorney.</i>	2
(d) <i>Prosecution by Information</i>	2
§ 2.06. Beginning of Trial.	2
§ 2.07. Sanctions.	3
III — TIME LIMITS	3
§ 3.01. Information/Indictments	3
§ 3.02. Trial	3
§ 3.03. Excluded Time.	3
(a) <i>General</i>	3
(b) <i>Starting and Ending Times</i>	4
§ 3.04. Special Rules	7
(a) <i>Application of Rule 45(a), Federal Rules of Criminal Procedure</i>	7
(b) <i>Trial With Respect to Other Charges</i>	7
(c) <i>Exclusion of Transportation Time</i>	7
(d) <i>Referrals to Magistrate Judges</i>	8
§ 3.05. Determination of Excludable Time and Objections Thereto	8
IV — PROCEDURES FOR PROMPT DISPOSITION OF CASES	8
§ 4.01. Appointment or Retention of Counsel	8
(a) <i>Appointment.</i>	8
(b) <i>Non-Availability of Counsel.</i>	8
§ 4.02. Arraignment	9
(a) <i>General.</i>	9
(b) <i>Arraignment Without Counsel</i>	9

§ 4.03. Pretrial Motions.	9
(a) <i>General.</i>	9
(b) <i>Rule 12(b) Motions</i>	9
(c) <i>Motions for Continuance under § 3161(h)(8) of the Act</i>	9
§ 4.04. Trial Date.	9
(a) <i>Setting</i>	9
(b) <i>Scheduling.</i>	9
§ 4.05. Responsibilities of the U.S. Attorney.	10
(a) <i>High Risk Defendants</i>	10
(b) <i>Unavailable Witnesses.</i>	10
§ 4.06. Responsibilities of the U.S. Marshal.	10
(a) <i>Return of Summons.</i>	10
(b) <i>Persons in Custody</i>	10
(c) <i>Out of District Arrests</i>	10
(d) <i>Rule 40 Transfers.</i>	10
 V — REPORTS	 11
 APPENDIX – STATUTORY EXCERPTS	 12
SPEEDY TRIAL ACT [TITLE 18, UNITED STATES CODE]	12
Section 3161. Time limits and exclusions	12
Section 3162. Sanctions	15
Section 3163. Effective dates [Omitted]	16
Section 3164. Persons detained or designated as being of high risk	16
Section 3165. District plans – generally	17
Section 3166. District plans – contents	18
Section 3167. Reports to Congress [Omitted]	19
Section 3168. Planning process [Omitted]	19
Section 3169. Federal Judicial Center [Omitted]	19
Section 3170. Speedy trial data [Omitted]	19
Section 3172. Definitions	19
Section 3173. Sixth amendment rights	20
Section 3174. Judicial emergency and implementation	20
JUVENILE DELINQUENCY [TITLE 18, UNITED STATES CODE]	21
Section 5036. Speedy trial	21
Section 5037. Dispositional hearing	21
INTERSTATE AGREEMENT ON DETAINERS [18 U.S.C. App. 2, § 2]	21
Article III	21
Article IV	22
Article V	22

I — ADOPTION

In accordance with the requirements of the Speedy Trial Act of 1974 and the Speedy Trial Amendments Act of 1979 [chapter 208, title 18, United States Code], the Federal Juvenile Delinquency Act [chapter 403, title 18, United States Code], and Rule 59(b), Federal Rules of Criminal Procedure, the following time limits and procedures to minimize undue delay and to further the prompt disposition of criminal cases and certain juvenile proceedings are hereby adopted for the United States District Court for the District of Alaska.

II — GENERAL

§ 2.01. **References to Statutes.**

Unless otherwise indicated, all references to statutes are to the provisions of the Speedy Trial Act of 1974 [chapter 208, title 18, United States Code] (“the Act”), in existence on the date of the adoption of this plan, or any act amendatory or in replacement thereof.

§ 2.02. **Conflicts.**

In the event of any conflict between the provisions of this plan and any act of Congress or federal rule of practice and procedure, the act of Congress or federal rule of practice and procedure will prevail.

§ 2.03. **Applicability.**

(a) *Offenses.* This plan applies to all persons charged with offenses defined in 18 U.S.C. § 3172(2) and criminal contempt proceedings under Rule 42(b), Federal Rules of Criminal Procedure.

(b) *Additional Persons to Whom Applicable.* This plan also applies to:

- (1) juveniles as provided in 18 U.S.C. § 5036; and
- (2) defendants described in Art III (a) of the Interstate Agreement on Detainers [18 U.S.C. App. 2, § 2].

§ 2.04. **Calendaring.**

Preferences in calendaring of criminal matters covered by this plan will be given as required by 18 U.S.C. §§ 3161(a) and 3164(b), and Rule 50(a), Federal Rules of Criminal Procedure.

§ 2.05. **Occurrence of Triggering Events**

(a) *Summons.* A summons is presumed to have been served on the date of service shown on the return.

(b) *Arrest.*

- (1) A person is presumed to be in custody when the person is:

[A] delivered to or otherwise in the legal custody of a federal official; or

[B] held in custody by state or local officials solely for the purpose of responding to a federal officer in connection with a federal charge.

(2) Detention is presumed to be solely for the purpose of responding to a federal charge unless the person exercising custodial authority has an independent basis (not including a detainer) for continuing to hold the defendant.

(3) If a case is transferred under Rule 20, Federal Rules of Criminal Procedure, and the defendant subsequently rejects disposition under Rule 20 or the court declines to accept the plea, a new period of continuous detention begins on the date that the defendant rejects disposition or the court declines to accept the plea.

(4) If a person has been arrested for an offense not charged in an information or indictment, at the first hearing before a judicial officer the date on which the arrest occurred will be established for the record.

(c) *Appearance by an Attorney.* An attorney will be presumed to have appeared in a criminal matter by:

(1) physically appearing on behalf of the defendant at any proceeding;

(2) filing a written notice of appearance in the case;

(3) filing a motion or other pleading or document on behalf of the defendant in the case;

(4) signifying to the court, either orally on the record in open court or in writing, that the attorney accepts appointment; or

(5) when the court is notified by the CJA Clerk that counsel has been appointed and accepted appointment.

(d) *Prosecution by Information.* If a felony offense is prosecuted by information under Rule 7(b), Federal Rules of Criminal Procedure, the time for trial is measured from the later of:

(1) the filing of the information; or

(2) the defendant's waiver in open court of prosecution by indictment.

(e) *Criminal Contempt.* In a criminal contempt proceeding prosecuted on notice under Rule 42(b), Federal Rules of Criminal Procedure, the notice is treated as an information.

§ 2.06. Beginning of Trial.

A trial will be presumed to have started on the date that:

(1) in the case of trial by jury, when *voir dire* begins; and

(2) in the case of a trial without jury, when the case is called for trial and the attorney for the government indicates on the record that the government is prepared to proceed to trial.

§ 2.07. Sanctions.

(1) Sanctions for violation of this Plan will be imposed as prescribed by 18 U.S.C. § 3162; provided, however, that a violation of this plan will not require dismissal except to the extent that dismissal may be required under 18 U.S.C. §§ 3162, 3164, 5036, or Articles IV.(e), V.(c) of the Interstate Agreement on Detainers [18 U.S.C. App. 2, § 2].

(2) Orders of dismissal that do not specify that the dismissal is with prejudice will be presumed to have been entered without prejudice.

III — TIME LIMITS

§ 3.01. Information/Indictments.

Informations or indictments must be filed within the time specified in 18 U.S.C. § 3161(b).

§ 3.02. Trial.

(1) The trial of a defendant covered by this Plan will be commenced not later than the time specified in 18 U.S.C. §§ 3161(c)(1), (d), (e); 3164(b); 5306, or Articles III.(a) or IV.(c) of the Interstate Agreement on Detainers [18 U.S.C. App. 2, § 2], as applicable.

(2) In the event that two or more statutes may apply, the applicable statute that provides for trial at the earliest time will apply.

§ 3.03. Excluded Time.

(a) General.

(1) In addition to the exclusions enumerated in 18 U.S.C. § 3161(h), the period of delay associated with any proceeding concerning the defendant excludable under case law binding on this court will be excluded, including, but not limited to:

[A] bail hearings;

[B] preliminary examinations under Rule 5.1, Federal Rules of Criminal Procedure;

[C] arraignments;

[D] pretrial conferences;

[E] depositions under Rule 15, Federal Rules of Criminal Procedure; and

[F] time used by the parties for consideration, preparation and response to specific requests by the court.

(2) Computation of periods of exclusion will be based on whole days and include both the day the event or proceeding giving rise to the excluded time commences and the day it terminates.

(3) Excludable time is not reduced on account of short interruptions in hearings or trials that are essentially continuous, *e.g.*, holidays, weekends, or as directed by the court.

(4) Where periods of excludable time overlap, the overlapping period will be counted only once, so that the total time excluded will be the time from the first day of the first overlapping period to the last day of the last overlapping period.

(b) *Starting and Ending Times.* For the purposes of computing excludable time, a period will be presumed to start and end as provided in this subsection. Unless otherwise directed by the presiding judge the clerk will record excludable time in accordance with this subsection.

(1) Section 3161(h)(1)(A) [mental competency or physical capacity proceedings]:

[A] Start: Date the motion is filed or made orally as reflected in the minutes of the court;

[B] End: Date on which all anticipated documents, reports or briefs have been filed, any necessary hearing completed and the matter deemed submitted for decision.

(2) Section 3161(h)(1)(D) [trial or other proceedings on other charges]:

[A] Start: The information, indictment, or other process initiating proceedings;

[B] End: Last court day of hearing or trial.

(3) Section 3161(h)(1)(E) [interlocutory appeal]:

[A] Start —

(i) Date the notice of appeal is filed in the district court, or

(ii) date application for an extraordinary writ is filed in the court of appeals;

[B] End — Date the appellate court issues the mandate or order.

(4) Section 3161(h)(1)(F) [pre-trial motions]:

[A] Start: Date motion filed or made orally as reflected in the minutes of the court;

[B] End: Date on which all anticipated briefs have been filed, any necessary hearing completed and the matter deemed submitted for decision.

(5) Section 3161(h)(1)(H) [transportation time]:

[A] Start: Date of order directing transportation of the defendant;

[B] End: Date of defendant's arrival at the destination.

(6) Section 3161(h)(1)(I) [consideration of proposed plea]:

[A] Start: The earlier of the date—

(i) the notice of intent to change of plea is filed under D.Ak. LCrR 11.1, or

(ii) the plea agreement is presented to the court under Rule 11(e)(2), Federal Rules of Civil Procedure;

[B] End: Date—

- (i) the notice of intent to change plea is withdrawn, or
- (ii) the court's decision with respect to the plea agreement is filed or announced on the record in open court.

(7) Section 3161(h)(1)(J) [proceedings under advisement]:

[A] Start: Day following the date on which the all anticipated briefs have been filed, any necessary hearing completed and the matter deemed submitted for decision.

[B] End: The earlier of—

- (i) the date the decision of the court is filed,
- (ii) the date the decision of the court is rendered orally upon the record in open court, or
- (iii) thirty (30) days after the start date.

(8) Other proceedings under § 3161(h)(1).

[A] Where the pretrial proceeding is in response to a motion, the start and stop times are as provided under § 3161(h)(1)(F) and (J).

[B] In other matters on those days on which court proceedings take place or on which a deposition was taken:

- (i) Start: The first day of the hearing, examination, arraignment, proceeding, conference, or deposition;
- (ii) End: The last day of the hearing, examination, arraignment, proceeding, conference, or deposition.

(9) Section 3161(h)(2) [consented deferred prosecutions]:

[A] Start: Date court approves the deferral agreement;

[B] End —

- (i) date of dismissal in accordance with the deferral agreement, or
- (ii) date the government's attorney files with the court notice to the defendant of an intent to resume prosecution.

(10) Section 3161(h)(3) [absence of defendant or essential witness]:

[A] Start —

- (i) the date on which the defendant or essential government witness fails to make a required appearance if it should be later determined that he or she was absent within the meaning of the statute, or

(ii) the date on which the court receives notice that the whereabouts of the defendant or essential witness is unknown.

[B] End: The date the prosecutor receives notice of the whereabouts of the absent defendant or essential witness.

(11) Section 6131(h)(3) [unavailability of defendant or government witness]:

[A] Start: The date for which an appearance was scheduled at which the defendant or witness was to appear;

[B] End: The day immediately preceding the first business day on which the defendant or the witness could have been produced in court by the Government.

(12) Section 6131(h)(4) [mental incompetency or physical disability of defendant]:

[A] Start —

(i) if determined by the court on the basis of a court-ordered examination, on the date the question of competency is brought to the attention of the court, or

(ii) if a proceeding is continued on the ground of mental incompetency or physical disability, the first date for which an appearance is scheduled at which the defendant is unable to appear;

[B] End: the earlier of—

(i) the day the court finds the defendant able to stand trial, or

(ii) the day the court receives notice from the defendant, an attending physician, or responsible institution that the defendant is able to stand trial.

(13) Section 6131(h)(6) [dismissed and subsequently reinstated charges]:

[A] Start the day the original indictment or information is dismissed;

[B] End: The first or earliest of the following to occur—

(i) arrest on the new charge,

(ii) service of a summons on the new charge, or

(iii) an appearance before a judicial officer on the new charge (whether before or after indictment and whether in or out of the district of prosecution).

(14) Section 3161(h)(7) [co-defendant]:

[A] Start —

(i) if the defendant's time would have otherwise run out before the running of the time for the co-defendant, the day following the day that would otherwise have been the last day for commencement of trial for the affected defendant, or

(ii) if based on an exclusion applicable to a co-defendant, the starting date of the co-defendant's exclusion.

[B] End —

(i) if the defendant's time would have otherwise run out before the running of the time for the co-defendant, the last permissible date for commencement of the trial of any co-defendant with whom the defendant is joined for trial, or

(ii) if based on an exclusion applicable to a co-defendant, the ending date of the co-defendant's exclusion, but

(iii) in any event the date upon which joinder ends.

(15) Section 3161(h)(8) [continuance in the interests of justice]:

[A] Start: the day the continuance is granted;

[B] End: the date to which the trial (or indictment) is continued.

§ 3.04. **Special Rules.**

(a) *Application of Rule 45(a), Federal Rules of Criminal Procedure.*

(1) In determining the last day under §§ 3161(b), 3161(c)(1), and 3161(c)(2), Rule 45(a) is applied before excludable time has been taken into account.

(2) In applying § 3161(h)(1)(J), if the 30th day falls on a Saturday, Sunday, or holiday, the excludable period is extended to the next following court day.

(3) In applying the presumption of § 3161(h)(1)(H), intervening Saturdays, Sundays, and Holidays are not to be counted.

(b) *Trial With Respect to Other Charges.* In cases where trial is deferred pending completion of other proceedings under § 3161(h)(1)(D), the court will require both the attorney for the government and counsel for the defendant to apprise the court on the status of the other case at such intervals as may be deemed appropriate under the facts and circumstances of the case.

(c) *Exclusion of Transportation Time.* The provisions of this subsection apply to the exclusion provided by § 3161(h)(1)(H) of the Act.

(1) Except for cause shown, when a defendant is ordered to travel in release status, the court will set a deadline for arrival at the destination, which time will not exceed ten (10) days.

(2) In those cases where another exclusion subsumes transportation time because of overlap, the transportation time is presumed to be reasonable.

(3) Where transportation time is a separate exclusion, time in excess of ten (10) days may not be excluded except upon order of the court for good cause shown.

(d) *Referrals to Magistrate Judges.*

(1) In matters referred to a magistrate judge under 28 U.S.C. § 636(b)(1)(A):

[A] the filing of decision by the magistrate judge ends the period of exclusion time; and

[B] if a party seeks review of the magistrate judge's decision, a new exclusion under § 3161(h)(1)(F) begins.

(2) In matters referred to a magistrate judge under 28 U.S.C. § 636(b)(1)(B), application of § 3161(h)(1)(J) of the Act to the proceeding before the district judge does not start until:

[A] if no objection is filed, the day after an objection to the findings and recommendations is due, or

[B] if an objection is filed, the earlier of the day after—

(i) the reply is received by the court, or

(ii) any reply is due.

§ 3.05. Determination of Excludable Time and Objections Thereto.

(1) Determinations concerning excludable time will be made by the court on the record and must contain a reference to any Speedy Trial provision relevant or pertaining to the excludable delay.

(2) Objections to the court's determination of the amount of excludable time must be filed within five (5) days of the date the order is served.

IV — PROCEDURES FOR PROMPT DISPOSITION OF CASES

§ 4.01. Appointment or Retention of Counsel

(a) *Appointment.* At the first hearing held before a judicial officer, the judicial officer will promptly appoint counsel where appropriate under the Criminal Justice Act, and in accordance with Rule 44, Federal Rules of Criminal Procedure and Rule 44.2, Local Criminal Rules of Practice for this court.

(b) *Non-Availability of Counsel.* The provisions of § 3161(c)(2) notwithstanding, the court may set the case for trial not less than forty-five (45) days from date of arraignment in the event that:

(1) the defendant does not qualify under the Criminal Justice Act;

(2) counsel willing to accept appointment can not be found; and

(3) within ten (10) days of arraignment —

[A] counsel has not appeared in the case, and

[B] defendant has not expressly waived counsel and elected to proceed *pro se*.

§ 4.02. Arraignment

(a) *General.* Unless it is determined that the defendant is physically or mentally incapable of being arraigned or that other good cause exists as to why arraignment should not proceed, a defendant must be arraigned promptly under Rule 10, Federal Rules of Criminal Procedure.

(b) *Arraignment Without Counsel.*

(1) If a defendant appears for arraignment without counsel, arraignment may be continued to permit defendant to obtain counsel.

(2) In the absence of extraordinary circumstances, arraignment should not be postponed for a period longer than five (5) business days.

(3) Where appropriate, the court may cause a plea of not guilty to be entered for the defendant.

§ 4.03. Pretrial Motions.

(a) *General.* All pretrial motions must be filed and heard as soon after arraignment as practicable consistent with the priorities of other matters on the court's criminal docket.

(b) *Rule 12(b) Motions.* Except for good cause shown, the court may not extend the time for filing motions under Rule 12(b), Federal Rules of Criminal Procedure, beyond twenty (20) days after the entry of a not guilty plea.

(c) *Motions for Continuance under § 3161(h)(8) of the Act.*

(1) A motion for a continuance under § 3161(h)(8) of the Act:

[A] must state whether or not the defendant is being held in custody; and

[B] may include a request that all or some part of the supporting material be considered *ex parte* or *in camera*.

(2) The court may grant a continuance under § 3161(h)(8) of the Act only for a specified period of time.

§ 4.04. Trial Date.

(a) *Setting.* After consultation with counsel, the trial date will be set at the arraignment or at the earliest practicable time thereafter, with each case set for trial on a day certain or listed for trial on a weekly or other short-term calendar.

(b) *Scheduling.*

(1) Each judge will schedule criminal trials at such times and at such places as may be necessary to assure prompt disposition of criminal cases.

(2) Cases will be reassigned as appropriate or necessary to carry out the purposes and objectives of this Plan.

§ 4.05. Responsibilities of the U.S. Attorney.

(a) *High Risk Defendants.* If the defendant is to be designated as high risk as defined in § 3164(a)(2) of the Act, the attorney for the government must advise the court at the earliest practicable time, and in any event not later than any bail or pretrial release hearing, that the person is so designated.

(b) *Unavailable Witnesses.*

(1) As soon as it is learned that an essential witness will be unavailable at the time set for trial, counsel for the government must immediately notify the court of that fact, which notification must set forth:

[A] the reason(s) that the witness is essential to the government's case;

[B] the reason or cause for the unavailability of the witness; and

[C] the period of expected unavailability.

(2) In the event that the unavailability of an essential witness may result in a continuance of the trial for a period of in excess of one (1) day, a written motion for continuance must be filed, which motion must set forth with specificity:

[A] the alternatives to a continuance that the government has explored; and

[B] the reason or reasons that any reasonable alternative is unacceptable.

§ 4.06. Responsibilities of the U.S. Marshal.

(a) *Return of Summons.* Where a summons is issued on a complaint, the U.S. Marshal, or other law enforcement officer, must:

(1) make immediate return of the summons to the appropriate judicial officer; or

(2) where it is impossible to serve summons, immediately report that fact to the appropriate judicial officer.

(b) *Persons in Custody.* If the defendant is in custody awaiting trial, the U.S. Marshal must advise the court at the earliest practicable time, and in any event not later than arraignment, the date of the beginning of custody as defined in § 2.06(b).

(c) *Out of District Arrests.* When a defendant is arrested out of the district on a warrant issued by this court, the U.S. Marshal will promptly report, in writing, the fact of the arrest to the Clerk of the Court.

(d) *Rule 40 Transfers.* When a defendant is to be transferred under Rule 40, Federal Rules of Criminal Procedure, the U.S. Marshal will promptly arrange to have the defendant transferred without delay to this district.

V — REPORTS

The Clerk of the Court will:

- (1) implement data collection procedures to gather, control and process information and data gathered from the U.S. Attorney, U.S. Marshal, Magistrate Judges, and District Judges as required by the Speedy Trial Act;
- (2) record the information on a control card, device, mechanical or electronic means, for each defendant;
- (3) enter on the docket, in the form prescribed by the Administrative Office of the United States Courts, all information with respect to excludable periods of time for each criminal defendant as determined by the court; and
- (4) assemble and prepare all statistical data required by the Administrative Office of the United States Courts and the Executive of the Judicial Conference of the Ninth Circuit.

APPENDIX – STATUTORY EXCERPTS

SPEEDY TRIAL ACT [TITLE 18, UNITED STATES CODE]

Section 3161. Time limits and exclusions

(a) In any case involving a defendant charged with an offense, the appropriate judicial officer, at the earliest practicable time, shall, after consultation with the counsel for the defendant and the attorney for the Government, set the case for trial on a day certain, or list it for trial on a weekly or other short-term trial calendar at a place within the judicial district, so as to assure a speedy trial.

(b) Any information or indictment charging an individual with the commission of an offense shall be filed within thirty days from the date on which such individual was arrested or served with a summons in connection with such charges. If an individual has been charged with a felony in a district in which no grand jury has been in session during such thirty-day period, the period of time for filing of the indictment shall be extended an additional thirty days.

(c) (1) In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs. If a defendant consents in writing to be tried before a magistrate judge on a complaint, the trial shall commence within seventy days from the date of such consent.

(2) Unless the defendant consents in writing to the contrary, the trial shall not commence less than thirty days from the date on which the defendant first appears through counsel or expressly waives counsel and elects to proceed pro se.

(d) (1) If any indictment or information is dismissed upon motion of the defendant, or any charge contained in a complaint filed against an individual is dismissed or otherwise dropped, and thereafter a complaint is filed against such defendant or individual charging him with the same offense or an offense based on the same conduct or arising from the same criminal episode, or an information or indictment is filed charging such defendant with the same offense or an offense based on the same conduct or arising from the same criminal episode, the provisions of subsections (b) and (c) of this section shall be applicable with respect to such subsequent complaint, indictment, or information, as the case may be.

(2) If the defendant is to be tried upon an indictment or information dismissed by a trial court and reinstated following an appeal, the trial shall commence within seventy days from the date the action occasioning the trial becomes final, except that the court retrying the case may extend the period for trial not to exceed one hundred and eighty days from the date the action occasioning the trial becomes final if the unavailability of witnesses or other factors resulting from the passage of time shall make trial within seventy days impractical. The periods of delay enumerated in section 3161(h) are excluded in computing the time limitations specified in this section. The sanctions of section 3162 apply to this subsection.

(e) If the defendant is to be tried again following a declaration by the trial judge of a mistrial or following an order of such judge for a new trial, the trial shall commence within seventy days from the date the action occasioning the retrial becomes final. If the defendant is to be tried again following an appeal or a collateral attack, the trial shall commence within seventy days from the date the action occasioning the retrial becomes final, except that the court retrying the case may extend the period for retrial not to exceed one hundred and eighty days from the date the action occasioning the retrial becomes final if unavailability of witnesses or other factors resulting from passage of time shall make trial within seventy days impractical. The periods of

delay enumerated in section 3161(h) are excluded in computing the time limitations specified in this section. The sanctions of section 3162 apply to this subsection.

(f) [Omitted]

(g) [Omitted]

(h) The following periods of delay shall be excluded in computing the time within which an information or an indictment must be filed, or in computing the time within which the trial of any such offense must commence:

(1) Any period of delay resulting from other proceedings concerning the defendant, including but not limited to—

(A) delay resulting from any proceeding, including any examinations, to determine the mental competency or physical capacity of the defendant;

(B) delay resulting from any proceeding, including any examination of the defendant, pursuant to section 2902 ^{1/} of title 28, United States Code;

(C) delay resulting from deferral of prosecution pursuant to section 2902 ^{1/} of title 28, United States Code;

(D) delay resulting from trial with respect to other charges against the defendant;

(E) delay resulting from any interlocutory appeal;

(F) delay resulting from any pretrial motion, from the filing of the motion through the conclusion of the hearing on, or other prompt disposition of, such motion;

(G) delay resulting from any proceeding relating to the transfer of a case or the removal of any defendant from another district under the Federal Rules of Criminal Procedure;

(H) delay resulting from transportation of any defendant from another district, or to and from places of examination or hospitalization, except that any time consumed in excess of ten days from the date an order of removal or an order directing such transportation, and the defendant's arrival at the destination shall be presumed to be unreasonable;

(I) delay resulting from consideration by the court of a proposed plea agreement to be entered into by the defendant and the attorney for the Government; and

(J) delay reasonably attributable to any period, not to exceed thirty days, during which any proceeding concerning the defendant is actually under advisement by the court.

(2) Any period of delay during which prosecution is deferred by the attorney for the Government pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct.

(3) (A) any period of delay resulting from the absence or unavailability of the defendant or an essential witness.

^{1/} This section has been repealed. [PL 106-310, 10/18/2000]

(B) For purposes of subparagraph (A) of this paragraph, a defendant or an essential witness shall be considered absent when his whereabouts are unknown and, in addition, he is attempting to avoid apprehension or prosecution or his whereabouts cannot be determined by due diligence. For purposes of such subparagraph, a defendant or an essential witness shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained by due diligence or he resists appearing at or being returned for trial.

(4) Any period of delay resulting from the fact that the defendant is mentally incompetent or physically unable to stand trial.

(5) Any period of delay resulting from the treatment of the defendant pursuant to section 2902 ^{1/2} of title 28, United States Code.

(6) If the information or indictment is dismissed upon motion of the attorney for the Government and thereafter a charge is filed against the defendant for the same offense, or any offense required to be joined with that offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge.

(7) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and no motion for severance has been granted.

(8) (A) Any period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or at the request of the attorney for the Government, if the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial. No such period of delay resulting from a continuance granted by the court in accordance with this paragraph shall be excludable under this subsection unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.

(B) The factors, among others, which a judge shall consider in determining whether to grant a continuance under subparagraph (A) of this paragraph in any case are as follows:

(i) Whether the failure to grant such a continuance in the proceeding would be likely to make a continuation of such proceeding impossible, or result in a miscarriage of justice.

(ii) Whether the case is so unusual or so complex, due to the number of defendants, the nature of the prosecution, or the existence of novel questions of fact or law, that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this section.

(iii) Whether, in a case in which arrest precedes indictment, delay in the filing of the indictment is caused because the arrest occurs at a time such that it is unreasonable to expect return and filing of the indictment within the period specified in section 3161(b), or because the facts upon which the grand jury must base its determination are unusual or complex.

(iv) Whether the failure to grant such a continuance in a case which, taken as a whole, is not so unusual or so complex as to fall within clause (ii), would deny the defendant reasonable time to obtain counsel, would unreasonably deny the defendant or the Government continuity of counsel, or would deny counsel for the defendant or the attorney for the Government the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

(C) No continuance under subparagraph (A) of this paragraph shall be granted because of general congestion of the court's calendar, or lack of diligent preparation or failure to obtain available witnesses on the part of the attorney for the Government.

(9) Any period of delay, not to exceed one year, ordered by a district court upon an application of a party and a finding by a preponderance of the evidence that an official request, as defined in section 3292 of this title, has been made for evidence of any such offense and that it reasonably appears, or reasonably appeared at the time the request was made, that such evidence is, or was, in such foreign country.

(i) If trial did not commence within the time limitation specified in section 3161 because the defendant had entered a plea of guilty or nolo contendere subsequently withdrawn to any or all charges in an indictment or information, the defendant shall be deemed indicted with respect to all charges therein contained within the meaning of section 3161, on the day the order permitting withdrawal of the plea becomes final.

(j) (1) If the attorney for the Government knows that a person charged with an offense is serving a term of imprisonment in any penal institution, he shall promptly—

(A) undertake to obtain the presence of the prisoner for trial; or

(B) cause a detainer to be filed with the person having custody of the prisoner and request him to so advise the prisoner and to advise the prisoner of his right to demand trial.

(2) If the person having custody of such prisoner receives a detainer, he shall promptly advise the prisoner of the charge and of the prisoner's right to demand trial. If at any time thereafter the prisoner informs the person having custody that he does demand trial, such person shall cause notice to that effect to be sent promptly to the attorney for the Government who caused the detainer to be filed.

(3) Upon receipt of such notice, the attorney for the Government shall promptly seek to obtain the presence of the prisoner for trial.

(4) When the person having custody of the prisoner receives from the attorney for the Government a properly supported request for temporary custody of such prisoner for trial, the prisoner shall be made available to that attorney for the Government (subject, in cases of interjurisdictional transfer, to any right of the prisoner to contest the legality of his delivery).

(k) (1) If the defendant is absent (as defined by subsection (h)(3)) on the day set for trial, and the defendant's subsequent appearance before the court on a bench warrant or other process or surrender to the court occurs more than 21 days after the day set for trial, the defendant shall be deemed to have first appeared before a judicial officer of the court in which the information or indictment is pending within the meaning of subsection (c) on the date of the defendant's subsequent appearance before the court.

(2) If the defendant is absent (as defined by subsection (h)(3)) on the day set for trial, and the defendant's subsequent appearance before the court on a bench warrant or other process or surrender to the court occurs not more than 21 days after the day set for trial, the time limit required by subsection (c), as extended by subsection (h), shall be further extended by 21 days.

Section 3162. Sanctions

(a) (1) If, in the case of any individual against whom a complaint is filed charging such individual with an offense, no indictment or information is filed within the time limit required by section 3161(b) as extended by section 3161(h) of this chapter, such charge against that individual contained in such complaint shall be dismissed or otherwise dropped. In determining whether to dismiss the case with or without prejudice, the

court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and on the administration of justice.

(2) If a defendant is not brought to trial within the time limit required by section 3161(c) as extended by section 3161(h), the information or indictment shall be dismissed on motion of the defendant. The defendant shall have the burden of proof of supporting such motion but the Government shall have the burden of going forward with the evidence in connection with any exclusion of time under subparagraph 3161(h)(3). In determining whether to dismiss the case with or without prejudice, the court shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of this chapter and on the administration of justice. Failure of the defendant to move for dismissal prior to trial or entry of a plea of guilty or nolo contendere shall constitute a waiver of the right to dismissal under this section.

(b) In any case in which counsel for the defendant or the attorney for the Government

(1) knowingly allows the case to be set for trial without disclosing the fact that a necessary witness would be unavailable for trial;

(2) files a motion solely for the purpose of delay which he knows is totally frivolous and without merit;

(3) makes a statement for the purpose of obtaining a continuance which he knows to be false and which is material to the granting of a continuance; or

(4) otherwise willfully fails to proceed to trial without justification consistent with section 3161 of this chapter, the court may punish any such counsel or attorney, as follows:

(A) in the case of an appointed defense counsel, by reducing the amount of compensation that otherwise would have been paid to such counsel pursuant to section 3006A of this title in an amount not to exceed 25 per centum thereof;

(B) in the case of a counsel retained in connection with the defense of a defendant, by imposing on such counsel a fine of not to exceed 25 per centum of the compensation to which he is entitled in connection with his defense of such defendant;

(C) by imposing on any attorney for the Government a fine of not to exceed \$250;

(D) by denying any such counsel or attorney for the Government the right to practice before the court considering such case for a period of not to exceed ninety days; or

(E) by filing a report with an appropriate disciplinary committee.

The authority to punish provided for by this subsection shall be in addition to any other authority or power available to such court.

(c) The court shall follow procedures established in the Federal Rules of Criminal Procedure in punishing any counsel or attorney for the Government pursuant to this section.

Section 3163. Effective dates [Omitted]

Section 3164. Persons detained or designated as being of high risk

(a) The trial or other disposition of cases involving—

(1) a detained person who is being held in detention solely because he is awaiting trial, and

(2) a released person who is awaiting trial and has been designated by the attorney for the Government as being of high risk, shall be accorded priority.

(b) The trial of any person described in subsection (a)(1) or (a)(2) of this section shall commence not later than ninety days following the beginning of such continuous detention or designation of high risk by the attorney for the Government. The periods of delay enumerated in section 3161(h) are excluded in computing the time limitation specified in this section.

(c) Failure to commence trial of a detainee as specified in subsection (b), through no fault of the accused or his counsel, or failure to commence trial of a designated releasee as specified in subsection (b), through no fault of the attorney for the Government, shall result in the automatic review by the court of the conditions of release. No detainee, as defined in subsection (a), shall be held in custody pending trial after the expiration of such ninety-day period required for the commencement of his trial. A designated releasee, as defined in subsection (a), who is found by the court to have intentionally delayed the trial of his case shall be subject to an order of the court modifying his nonfinancial conditions of release under this title to insure that he shall appear at trial as required

Section 3165. District plans – generally

(a) Each district court shall conduct a continuing study of the administration of criminal justice in the district court and before United States magistrate judges of the district and shall prepare plans for the disposition of criminal cases in accordance with this chapter. Each such plan shall be formulated after consultation with, and after considering the recommendations of, the Federal Judicial Center and the planning group established for that district pursuant to section 3168. The plans shall be prepared in accordance with the schedule set forth in subsection (e) of this section.

(b) The planning and implementation process shall seek to accelerate the disposition of criminal cases in the district consistent with the time standards of this chapter and the objectives of effective law enforcement, fairness to accused persons, efficient judicial administration, and increased knowledge concerning the proper functioning of the criminal law. The process shall seek to avoid underenforcement, overenforcement and discriminatory enforcement of the law, prejudice to the prompt disposition of civil litigation, and undue pressure as well as undue delay in the trial of criminal cases.

(c) The plans prepared by each district court shall be submitted for approval to a reviewing panel consisting of the members of the judicial council of the circuit and either the chief judge of the district court whose plan is being reviewed or such other active judge of that court as the chief judge of that district court may designate. If approved by the reviewing panel, the plan shall be forwarded to the Administrative Office of the United States Courts, which office shall report annually on the operation of such plans to the Judicial Conference of the United States.

(d) The district court may modify the plan at any time with the approval of the reviewing panel. It shall modify the plan when directed to do so by the reviewing panel or the Judicial Conference of the United States. Modifications shall be reported to the Administrative Office of the United States Courts.

(e) (1) Prior to the expiration of the twelve-calendar-month period following July 1, 1975, each United States district court shall prepare and submit a plan in accordance with subsections (a) through (d) above to govern the trial or other disposition of offenses within the jurisdiction of such court during the second and third twelve-calendar-month periods following the effective date of subsection 3161(b) and subsection 3161(c).

(2) Prior to the expiration of the thirty-six calendar month period following July 1, 1975, each United States district court shall prepare and submit a plan in accordance with subsections (a) through (d) above to

govern the trial or other disposition of offenses within the jurisdiction of such court during the fourth and fifth twelve-calendar-month periods following the effective date of subsection 3161(b) and subsection 3161(c).

(3) Not later than June 30, 1980, each United States district court with respect to which implementation has not been ordered under section 3174(c) shall prepare and submit a plan in accordance with subsections (a) through (d) to govern the trial or other disposition of offenses within the jurisdiction of such court during the sixth and subsequent twelve-calendar-month periods following the effective date of subsection 3161(b) and subsection 3161(c) in effect prior to the date of enactment of this paragraph.

(f) Plans adopted pursuant to this section shall, upon adoption, and recommendations of the district planning group shall, upon completion, become public documents

Section 3166. District plans – contents

(a) Each plan shall include a description of the time limits, procedural techniques, innovations, systems and other methods, including the development of reliable methods for gathering and monitoring information and statistics, by which the district court, the United States attorney, the Federal public defender, if any, and private attorneys experienced in the defense of criminal cases, have expedited or intend to expedite the trial or other disposition of criminal cases, consistent with the time limits and other objectives of this chapter.

(b) Each plan shall include information concerning the implementation of the time limits and other objectives of this chapter, including:

(1) the incidence of and reasons for, requests or allowances of extensions of time beyond statutory or district standards;

(2) the incidence of, and reasons for, periods of delay under section 3161(h) of this title;

(3) the incidence of, and reasons for, the invocation of sanctions for noncompliance with time standards, or the failure to invoke such sanctions, and the nature of the sanction, if any invoked for noncompliance;

(4) the new timetable set, or requested to be set, for an extension;

(5) the effect on criminal justice administration of the prevailing time limits and sanctions, including the effects on the prosecution, the defense, the courts, the correctional process, costs, transfers and appeals;

(6) the incidence and length of, reasons for, and remedies for detention prior to trial, and information required by the provisions of the Federal Rules of Criminal Procedure relating to the supervision of detention pending trial;

(7) the identity of cases which, because of their special characteristics, deserve separate or different time limits as a matter of statutory classifications;

(8) the incidence of, and reasons for each thirty-day extension under section 3161(b) with respect to an indictment in that district; and

(9) the impact of compliance with the time limits of subsections (b) and (c) of section 3161 upon the civil case calendar in the district.

(c) Each district plan required by section 3165 shall include information and statistics concerning the administration of criminal justice within the district, including, but not limited to:

(1) the time span between arrest and indictment, indictment and trial, and conviction and sentencing;

(2) the number of matters presented to the United States Attorney for prosecution, and the numbers of such matters prosecuted and not prosecuted;

(3) the number of matters transferred to other districts or to States for prosecution;

(4) the number of cases disposed of by trial and by plea;

(5) the rates of nolle prosequi, dismissal, acquittal, conviction, diversion, or other disposition;

(6) the extent of preadjudication detention and release, by numbers of defendants and days in custody or at liberty prior to disposition; and

(7) (A) the number of new civil cases filed in the twelve-calendar-month period preceding the submission of the plan;

(B) the number of civil cases pending at the close of such period; and

(C) the increase or decrease in the number of civil cases pending at the close of such period, compared to the number pending at the close of the previous twelve-calendar-month period, and the length of time each such case has been pending.

(d) Each plan shall further specify the rule changes, statutory amendments, and appropriations needed to effectuate further improvements in the administration of justice in the district which cannot be accomplished without such amendments or funds.

(e) Each plan shall include recommendations to the Administrative Office of the United States Courts for reporting forms, procedures, and time requirements. The Director of the Administrative Office of the United States Courts, with the approval of the Judicial Conference of the United States, shall prescribe such forms and procedures and time requirements consistent with section 3170 after consideration of the recommendations contained in the district plan and the need to reflect both unique local conditions and uniform national reporting standards.

(f) Each plan may be accompanied by guidelines promulgated by the judicial council of the circuit for use by all district courts within that circuit to implement and secure compliance with this chapter

Section 3167. Reports to Congress [Omitted]

Section 3168. Planning process [Omitted]

Section 3169. Federal Judicial Center [Omitted]

Section 3170. Speedy trial data [Omitted]

Section 3172. Definitions

As used in this chapter—

(1) the terms "judge" or "judicial officer" mean, unless otherwise indicated, any United States magistrate judge, Federal district judge, and

(2) the term "offense" means any Federal criminal offense which is in violation of any Act of Congress and is triable by any court established by Act of Congress (other than a Class B or C misdemeanor or an infraction, or an offense triable by court-martial, military commission, provost court, or other military tribunal)

Section 3173. Sixth amendment rights

No provision of this chapter shall be interpreted as a bar to any claim of denial of speedy trial as required by amendment VI of the Constitution

Section 3174. Judicial emergency and implementation

(a) In the event that any district court is unable to comply with the time limits set forth in section 3161(c) due to the status of its court calendars, the chief judge, where the existing resources are being efficiently utilized, may, after seeking the recommendations of the planning group, apply to the judicial council of the circuit for a suspension of such time limits as provided in subsection (b). The judicial council of the circuit shall evaluate the capabilities of the district, the availability of visiting judges from within and without the circuit, and make any recommendations it deems appropriate to alleviate calendar congestion resulting from the lack of resources.

(b) If the judicial council of the circuit finds that no remedy for such congestion is reasonably available, such council may, upon application by the chief judge of a district, grant a suspension of the time limits in section 3161(c) in such district for a period of time not to exceed one year for the trial of cases for which indictments or informations are filed during such one-year period. During such period of suspension, the time limits from arrest to indictment, set forth in section 3161(b), shall not be reduced, nor shall the sanctions set forth in section 3162 be suspended; but such time limits from indictment to trial shall not be increased to exceed one hundred and eighty days. The time limits for the trial of cases of detained persons who are being detained solely because they are awaiting trial shall not be affected by the provisions of this section.

(c) (1) If, prior to July 1, 1980, the chief judge of any district concludes, with the concurrence of the planning group convened in the district, that the district is prepared to implement the provisions of section 3162 in their entirety, he may apply to the judicial council of the circuit in which the district is located to implement such provisions. Such application shall show the degree of compliance in the district with the time limits set forth in subsections (b) and (c) of section 3161 during the twelve-calendar-month period preceding the date of such application and shall contain a proposed order and schedule for such implementation, which includes the date on which the provisions of section 3162 are to become effective in the district, the effect such implementation will have upon such district's practices and procedures, and provision for adequate notice to all interested parties.

(2) After review of any such application, the judicial council of the circuit shall enter an order implementing the provisions of section 3162 in their entirety in the district making application, or shall return such application to the chief judge of such district, together with an explanation setting forth such council's reasons for refusing to enter such order.

(d) (1) The approval of any application made pursuant to subsection (a) or (c) by a judicial council of a circuit shall be reported within ten days to the Director of the Administrative Office of the United States Courts, together with a copy of the application, a written report setting forth in sufficient detail the reasons for granting such application, and, in the case of an application made pursuant to subsection (a), a proposal for alleviating congestion in the district.

(2) The Director of the Administrative Office of the United States Courts shall not later than ten days after receipt transmit such report to the Congress and to the Judicial Conference of the United States. The judicial council of the circuit shall not grant a suspension to any district within six months following the expiration of a prior suspension without the consent of the Congress by Act of Congress. The limitation on granting a suspension made by this paragraph shall not apply with respect to any judicial district in which

the prior suspension is in effect on the date of the enactment of the Speedy Trial Act Amendments Act of 1979.

(e) If the chief judge of the district court concludes that the need for suspension of time limits in such district under this section is of great urgency, he may order the limits suspended for a period not to exceed thirty days. Within ten days of entry of such order, the chief judge shall apply to the judicial council of the circuit for a suspension pursuant to subsection (a)

JUVENILE DELINQUENCY [TITLE 18, UNITED STATES CODE]

Section 5036. Speedy trial

If an alleged delinquent who is in detention pending trial is not brought to trial within thirty days from the date upon which such detention was begun, the information shall be dismissed on motion of the alleged delinquent or at the direction of the court, unless the Attorney General shows that additional delay was caused by the juvenile or his counsel, or consented to by the juvenile and his counsel, or would be in the interest of justice in the particular case. Delays attributable solely to court calendar congestion may not be considered in the interest of justice. Except in extraordinary circumstances, an information dismissed under this section may not be reinstituted

Section 5037. Dispositional hearing

(a) If the court finds a juvenile to be a juvenile delinquent, the court shall hold a disposition hearing concerning the appropriate disposition no later than twenty court days after the juvenile delinquency hearing unless the court has ordered further study pursuant to subsection (d). After the disposition hearing, and after considering any pertinent policy statements promulgated by the Sentencing Commission pursuant to 28 U.S.C. 994, the court may suspend the findings of juvenile delinquency, enter an order of restitution pursuant to section 3556, place him on probation, or commit him to official detention. With respect to release or detention pending an appeal or a petition for a writ of certiorari after disposition, the court shall proceed pursuant to the provisions of chapter 207.

(b) [Omitted]

(c) [Omitted]

(d) [Omitted]

INTERSTATE AGREEMENT ON DETAINERS [18 U.S.C. APP. 2, § 2]

Article III

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint; provided, that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable

continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

Article IV

(a) [Omitted]

(b) [Omitted]

(c) In respect of any proceedings made possible by this Article, trial shall be commenced within one hundred twenty days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d). Omitted

(e) If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V (e) hereof, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Article V.

(a) [Omitted]

(b) [Omitted]

(c) If the appropriate authority shall refuse or fail to accept temporary custody of such person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.